IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4393 of 2006

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRADIP RAMESHBHAI PATEL - Petitioner(s)
Versus
SARDAR PATEL UNIVERSITY & 1 - Respondent(s)

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Appearance :
MR CHIRAG B.PATEL for MR BS PATEL for Petitioner(s)
MR PARESH DARJI for MR MITUL K SHELAT for Respondent: 1

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 04/11/2006

ORAL JUDGMENT

1. By way of the present Writ petition filed under Articles 14, 16 and 226 of the Constitution, the petitioner has prayed to

issue a Writ of Mandamus or any other appropriate Writ, order or direction to quash and set aside the order dated 2.3.2006 passed by the respondent No.1, annexed as Annexure-A to the petition, whereby the request of the petitioner for grant of additional time of three hours to answer the question papers in the examination of First Year Bachelor of Computer Applications (BCA) has been refused.

2. Rule returnable on 22.3.2006 was issued by this Court (Coram: D.H.Waghela, J.) on 10.3.2006 and ad-interim relief to the effect that the petitioner be granted additional time of ninety minutes for attending the question papers in the ensuing examinations of First Year BCA commencing from 23.3.2006 was also granted.

3. Mr.Paresh Darji, learned counsel, appears for Mr.Mitul K.Shelat, learned counsel for the respondent No.1. The respondent No.2 is duly served but none appears on its behalf today. With the consent of parties, the petition is

being heard finally today.

4. The petitioner is suffering from Cerebral Palsy, which is a serious disorder restricting the movement and posture, due to which, the petitioner is physically handicapped and normal functioning of his bones, muscles, joints and communication skills are seriously affected. In spite of this disability, the petitioner pursued his education at M.G.M.Amin and V.N.Savani School, Valsad, and passed the Standard-X examination in the year 2002 and Standard-XII examination in the year 2005. The petitioner secured 66% and 68% marks respectively in both these examinations. Thereafter, the petitioner appeared in the examination conducted by the Central Board of Secondary Education. Since the petitioner is suffering from Cerebral Palsy, he has been given help of writer as well as one hour extra time during Standard-X and XII examinations. The petitioner is now pursuing the BCA course in respondent No.2 college, affiliated to Sardar

Patel University.

5. The petitioner is Quadriplegic i.e. paralysed in all four limbs and is permanently disabled, which is quite evident from the certificate dated 8.3.1994 issued by the Director, All India Institute of Physical Medicine and Rehabilitation, Bombay, annexed at Annexure-C to the petition. Since he is suffering from a permanent disability, he can neither write nor speak properly and requires the help of a writer during examinations. Due to lack of communication skills the petitioner requires sufficient time to communicate with the writer at the time of answering / attending question papers during examinations and also faces practical difficulty in operating computers. In view of these difficulties faced by the petitioner, he had made a request to the respondents to provide him with the services of a writer and also allot extra time of 3+3 hours in order to enable him to attend the examination of First Year BCA. This communication dated

24.2.2006 has been annexed by the petitioner at running page-15 of the petition. The request of the petitioner was turned down by the respondent No.1 vide letter dated 2.3.2006, giving rise to the instant petition.

6. I have heard Mr.Chirag Patel for Mr.B.S.Patel, learned counsel for the petitioner, and Mr.Paresh Darji, learned counsel, for Mr.Mitul K.Shelat, learned counsel for the respondent No.1, and have gone through the averments made in the petition and the material on record.

7. It is an admitted fact that the petitioner is suffering from Cerebral Palsy due to which he is seriously handicapped and unable to attend his examinations like other normal students. While attending earlier examinations also, his request for grant of writer and extra time was favourably considered. However, the respondents have refused the same request vide Annexure-A without assigning any cogent

reasons for such refusal. As observed earlier, by way of ad-interim relief, this Court has permitted the petitioner to attend the question papers in the ensuing examination of BCA commencing from 23.3.2006 with additional time of 90 minutes. Admittedly, the examinations are now over and by way of the above noted interim order dated 10.3.2006, the grievance of the petitioner has been effectively redressed. Therefore, nothing survives in the instant petition, which has now become infructuous.

8. However, while disposing of the Writ petition, this Court is of the opinion that in view of the provisions of Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, which has been enacted to ameliorate the difficulties faced by handicapped and disabled persons and in view of the Division Bench judgment of the High Court of Judicature at Bombay in Writ Petition (L) No.1256 of 2003, titled Dhawal S.Chotai v. Union of India & Ors. Dated

30.4.2006, annexed as Annexure-D to the petition, and taking into consideration the serious disability faced by the petitioner, the respondents should adopt a humanitarian approach and, in case the petitioner makes a similar request for future examinations, the same should be considered with utmost sympathy, keeping in view the above position.

9. The Writ petition is disposed of as having become infructuous, subject to above observations. Rule is discharged. There shall be no order as to costs.

(Smt.Abhilasha Kumari, J.)

(sunil)